

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B5

PUBLIC COPY

File:

SRC 04 156 52885

Office: TEXAS SERVICE CENTER Date: AUG 02 2006

IN RE:

Petitioner:
Beneficiary

Petition:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maureen Plerson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) determined that the appeal was not filed in a timely manner. The AAO rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reopen. The motion will be rejected.

The director issued the denial on May 2, 2005, properly giving notice to the petitioner that it had 33 days to file the appeal. The regulation at 8 C.F.R. § 103.2(a)(2) requires that an application or petition be signed. The regulation at 8 C.F.R. § 103.2(a)(7) provides that an application or petition shall be regarded as properly filed as of the receipt date “if it is properly signed and executed.” Although counsel dated the appeal May 26, 2005, it was received by Citizenship and Immigration Services (CIS) *properly signed* on June 9, 2005, or 38 days after the decision was issued. Accordingly, the appeal was rejected as untimely filed.

The petitioner has now filed a motion seeking to reopen the appeal that was rejected as untimely filed based on his assertion that “The Service” has the discretion to excuse the delay in the receipt of the returned Form I-290B Notice of Appeal and should do so since the director returned the Form I-290B for signature only five days before the expiration of the 33-day period.

Counsel asserts that the delay was reasonable and beyond the petitioner’s control. The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a late *motion to reopen* may be excused in the discretion of the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. The matter before the AAO, however, was an *appeal*. No such discretion is provided for untimely appeals. Specifically, any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

The petitioner has filed a motion seeking to reopen the appeal that was rejected as untimely filed. As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the disputed decision was rendered by the director, the AAO has no jurisdiction over this motion and the motion must be rejected.

ORDER: The motion is rejected.